



# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

L. JOYCE HAMPERS  
COMMISSIONER

May 19, 1980

You request a ruling concerning the Massachusetts income tax status of deferred compensation of employees participating in the Deferred Compensation Plan ("Plan") of the City of ("City").

The Plan was organized pursuant to Massachusetts General Laws Chapter 44, Section 67. This section authorizes the treasurer of any Massachusetts city or town to contract with an employee to defer payment of a portion of the employee's income; the deferred portion may be invested in a life insurance or annuity contract, mutual fund or a bank investment trust.

Under Section 457 of the Internal Revenue Code compensation deferred under an eligible state deferred compensation plan is includible in an employee's federal gross income only in the taxable year in which such compensation is paid to the employee. An eligible state deferred compensation plan may be established and maintained by a state, by any political subdivision of a state, or by their respective agencies.

In order for compensation to be deferred under Section 457, the plan must: (1) be composed only of individuals who perform service for the employer; (2) provide that the maximum that may be deferred under the plan for the taxable year not exceed the lesser of \$7500 or 33 1/3% of the participant's includible compensation (except higher ceilings may also be provided to employees within three years of normal retirement age); (3) provide that compensation may be deferred for any calendar month only if an agreement providing for deferral has been entered into before the beginning of that calendar month; (4) not provide that amounts payable under the plan will be available to participants or other beneficiaries earlier than when the participant is separated from service with the employer or is faced with an unforeseeable emergency; and (5) provide that all amounts of compensation deferred under the plan, all property and rights purchased with such amounts and all income attributable to such amounts, property or rights remain solely the property and rights of the employer until made available to the participant or other beneficiary.

The requirements of your Plan appear to be consistent with those in Section 457. The terms of the Plan are as follows: (1) any employee, designated as eligible, who executes a Participation Agreement may participate; (2) at the time of entering into the agreement to defer compensation, a participant must agree to defer an amount for each taxable year which is no greater than the federally established ceiling; (3) a participant may only modify the agreement to change the amount deferred with respect to compensation to be earned in a subsequent calendar month; (4) a participant may revoke his agreement by notifying the administrative committee in writing at least 30 days prior to the effective date of the termination; amounts which have been deferred are not available to such participant earlier than when he has ceased employment with the City, or is faced with an unforeseen emergency; (5) a participant

who retires or otherwise terminates his employment shall receive a fixed monthly payment determined pursuant to the Participation Agreement; (6) the designated beneficiary of a participant who dies after retirement shall be entitled to receive the balance remaining of such payments; (7) in the case of a financial emergency, a participant may apply for a withdrawal of amounts under the Plan prior to retirement. 'Financial Emergency' for purposes of the Plan is limited to unexpected and unreimbursed major expenses resulting from illness or death of a member of the participant's family and other events which would result in great hardship to the employee if withdrawal were not allowed; (8) neither the participant nor his beneficiary may in any way convey the right to receive any payments; (9) all amounts deferred under the Plan, all property and rights purchased by the City with such amounts and all income attributable to such amounts, property or rights shall remain solely the property of the City.

Massachusetts General Laws Chapter 62, Section 2(a) defines Massachusetts gross income as federal gross income with modifications not here relevant. Income is subject to Massachusetts income tax withholding if it is taxable under Massachusetts personal income tax law and if it constitutes wages for federal withholding purposes. (Massachusetts General Laws Chapter 62B, Section 1).

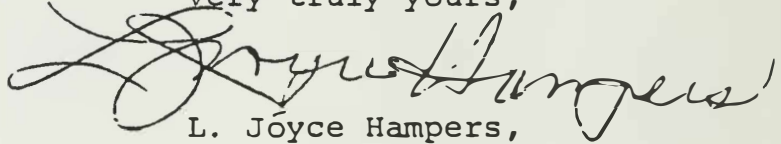
Based on the foregoing it is ruled that:

1. Amounts deferred under the City Deferred Compensation Plan are not taxable under Massachusetts personal income tax laws in the year deferred, to the extent that such amounts are not taxable for federal income tax purposes.

2. Amounts deferred by participants in the City  
Deferred Compensation Plan are not  
subject to withholding of Massachusetts income taxes  
at the time such amounts are deferred and are not  
included on the Form W-2 (Wages and Tax Statement)  
as wages or other compensation until the year in  
which the funds are made available to the employees.

3. Amounts deferred by participants in the City  
Deferred Compensation Plan are includible  
in Massachusetts gross income and are subject to  
withholding of Massachusetts income taxes during  
the taxable year in which such amounts are paid  
or otherwise made available to such employees,  
their beneficiaries or estates through retirement,  
separation from service, death or unusual hardship.

Very truly yours,

A handwritten signature in dark ink, appearing to read "L. Joyce Hampers", written in a cursive style.

L. Joyce Hampers,  
Commissioner of Revenue

LJH/RSF/jmcd

LR 80-28